

§ 405.372

§ 405.372 Finality of an administrative law judge's decision.

The decision of the administrative law judge becomes our final decision and is binding on you unless—

(a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under § 405.373.

§ 405.373 Requesting consideration of new evidence.

(a) If the administrative law judge's decision is our final decision, the administrative law judge will consider new evidence submitted after the issuance of the decision if your claim has not been referred to the Decision Review Board. To obtain such consideration, you must request consideration by the administrative law judge at the earliest possible opportunity, but no later than 30 days after the date you receive notice of the decision.

(b) The administrative law judge will accept the evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c)(1) The administrative law judge will notify you within 10 days whether or not he or she will reconsider the final decision.

(2) If the administrative law judge declines to reconsider his or her decision, the decision remains final. If you choose to seek judicial review, you must file in Federal court within the 60-day period beginning with the date you originally received the final decision.

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(3) If the administrative law judge agrees to reconsider his or her decision based on the new evidence, the final decision is vacated and not subject to judicial review. After considering the new evidence, the administrative law judge will take appropriate action, including rendering a decision under § 405.370, and we will send you notice of the decision under § 405.371.

(d) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (b) of this section.

§ 405.380 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 405.20(a) of this part;

(c) If the doctrine of res judicata applies because we have made a previous determination or decision on your disability claim on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 405.305;